

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0109-24_

SPONSOR: Crystalayne Curley

TITLE: An Action Relating to the Resources and Development, Budget and Finance, and Naabik'iyáti' Committees and the Navajo Nation Council; Approving the Northeastern Arizona Indian Water Rights Settlement Agreement; Approving a Limited Waiver of Sovereign Immunity to Allow the Navajo Nation to be Joined as a Party in Certain Actions; Consenting and Conditionally Approving Associated Rights-of-Way and Waiving Associated Taxes Required Under Navajo Law; Requesting Waivers of Sections Contained in 25 C.F.R. Part 169; and Approving the Side Agreement Concerning C-Aquifer Pumping

Date posted: May 13, 2024 at 8:59PM

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Office of Legislative Services
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LEGISLATIVE SUMMARY SHEET

Tracking No. 0109-24

DATE: May 13, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT AGREEMENT; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW THE NAVAJO NATION TO BE JOINED AS A PARTY IN CERTAIN ACTIONS; CONSENTING AND CONDITIONALLY APPROVING ASSOCIATED RIGHTS-OF-WAY AND WAIVING ASSOCIATED TAXES REQUIRED UNDER NAVAJO LAW; REQUESTING WAIVERS OF SECTIONS CONTAINED IN 25 C.F.R. PART 169; AND APPROVING THE SIDE AGREEMENT CONCERNING C-AQUIFER PUMPING

PURPOSE: The purpose of this legislation is to approve the Northeastern Arizona Indian Water Rights Settlement Agreement and to approve a limited waiver of sovereign immunity.

Final Authority: Navajo Nation Council

Vote Required: 2/3 vote of the full membership of the Navajo Nation Council

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD Johnson
Website Posting Time/Date _____
Posting End Date: 05-18-24
Eligible for Action: 05-19-24

Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 NAVAJO NATION COUNCIL RESOLUTION
2 25th NAVAJO NATION COUNCIL – Second Year, 2024
3 INTRODUCED BY

4
5 _____
6 (Prime Sponsor)



7
8 TRACKING NO. 0109-24
9

10 AN ACTION

11 RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND
12 FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION
13 COUNCIL; APPROVING THE NORTHEASTERN ARIZONA INDIAN WATER
14 RIGHTS SETTLEMENT AGREEMENT; APPROVING A LIMITED WAIVER OF
15 SOVEREIGN IMMUNITY TO ALLOW THE NAVAJO NATION TO BE JOINED AS
16 A PARTY IN CERTAIN ACTIONS; CONSENTING AND CONDITIONALLY
17 APPROVING ASSOCIATED RIGHTS-OF-WAY AND WAIVING ASSOCIATED
18 TAXES REQUIRED UNDER NAVAJO LAW; REQUESTING WAIVERS OF
19 SECTIONS CONTAINED IN 25 C.F.R. PART 169; AND APPROVING THE SIDE
20 AGREEMENT CONCERNING C-AQUIFER PUMPING
21

22 **BE IT ENACTED:**

23
24 **SECTION ONE. AUTHORITY**

- 25
26 A. The Resources and Development Committee is a standing committee of the Navajo
27 Nation Council empowered with oversight authority over the waters of the
28 Navajo Nation and to protect this resource for the Navajo Nation and the Navajo
29 People, now and for future generations. 2 N.N.C. §§ 500 (A) and 500 (C)(1).
30

- 1 B. The Budget and Finance Committee is a standing committee of the Navajo Nation
2 Council empowered with oversight authority over the budget, finance, investment,
3 bonds, contracting, insurance, audits, accounting, taxes, loans, and chapter budget
4 and finance and is empowered to review and recommend to the Navajo Nation
5 Council the budgeting, appropriation, investment, and management of all funds.
6 2 N.N.C. §§300(A), 300(C), and 301(B)(2).
- 7 C. The Naabik'iyáti' Committee is established as a standing committee of the
8 Navajo Nation Council empowered to review proposed legislation which requires
9 final action by the Navajo Nation Council. 2 N.N.C. §§ 164(A)(9), 700(A), and
10 701(A)(7).
- 11 D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C.
12 § 102(A).
- 13 E. Any waiver of tax or associated interest requires a two-thirds (2/3) vote of the full
14 membership of the Navajo Nation Council. 24 N.N.C §106.
- 15 F. The Navajo Nation Council is authorized to approve a limited waiver of the
16 Navajo Nation's sovereign immunity by a two-thirds (2/3) vote of the full
17 membership of the Navajo Nation Council. 1 N.N.C § 554(C) and 2 N.N.C § 223(C).
- 18

19 **SECTION TWO. ARIZONA WATER RIGHTS IN THE UPPER AND LOWER**
20 **COLORADO RIVER BASINS AND SETTLEMENT NEGOTIATIONS**

- 21 A. Since Navajo creation, water has served as a fundamental element to Navajo life.
22 *Tó béi da' iiná*, (with water, there is life), and it is elemental to *Hózhóogo Oodáál*
23 (the Navajo Way of Life). We pray and make offerings for rain to fill our rivers so
24 our animals, crops, land, and people can grow and thrive. In the *Hózhóóji*
25 (Blessingway Ceremony), we cleanse our bodies with water and wash our hair to
26 restore harmony to our lives. Many Navajo People are connected to water through
27 our clan names.
- 28 B. Water is a fundamental element to Navajo ceremonial life, provides nourishment and
29 hygiene for the Navajo People, waters Navajo crops and livestock, and sustains
30 Navajo wildlife and riparian vegetation.

- 1 C. In recognition of *Tó'ei'iiná at'e* (water is life), the Navajo Nation Council has
2 determined that water is essential “to provide for a permanent homeland for the
3 Navajo People.” 22 N.N.C. § 1101.
- 4 D. *Bits'iis Níneez* (River of Long Life Span – the Colorado River) and *Tolchi'ikoooh* (Red
5 Water Wash – the Little Colorado River), born from our sacred mountains, are two
6 of the four sacred rivers that set the boundaries for *Dinétaah* (Navajoland) and are
7 protectors for the Navajo People. The settlement of the Navajo Nation’s claims to
8 waters located in Arizona ensures that these rivers will continue to protect the Navajo
9 Nation and the Navajo People and sustain life on our lands – forever.
- 10 E. Navajo communities in Arizona that encompass portions of the Upper Basin of
11 *Bits'iis Níneez* (the “Upper Basin”) and the Lower Basin of *Bits'iis Níneez* (the
12 “Lower Basin”), including the *Tolchi'ikoooh* Basin (the “Little Colorado River Basin”
13 or “LCR Basin”), have severe water infrastructure deficiencies that negatively impact
14 the health, economy, and welfare of the Navajo People and the Navajo Nation, as
15 recognized by the Navajo Nation Department of Water Resources. Water Resource
16 Development Strategy for the Navajo Nation (July 2011) at VIII.
- 17 F. In 2020, during the Coronavirus (“COVID-19”) pandemic, the lack of water
18 infrastructure on the Navajo Nation exacerbated the spread of the virus, which
19 infected more than 90,000 Navajo People, resulted in the death of more than 2,000
20 Navajo People, and placed the Navajo Nation in the global and national spotlight for
21 its lack of access to clean water. Without access to potable water, Navajo
22 communities remain disproportionately vulnerable to COVID-19 and other infectious
23 diseases.
- 24 G. The lack of water infrastructure and access to potable water sources on the Navajo
25 Nation is compounded by intensifying and rapid climate change and a megadrought
26 impacting the American Southwest, including the Navajo Nation. Settlement of the
27 Navajo Nation’s water rights claims in Arizona will protect the Navajo People from
28 these impacts and sustain continued life on the Navajo Nation by ensuring that
29 meaningful water sources, including surface water from the Colorado River Upper
30

1 Basin and Lower Basin, will be available and accessible to the Navajo People in the
2 near term and for generations to come.

3 H. Beginning in 1978, in an effort to quantify the rights of the various Tribes and other
4 users, the State of Arizona commenced the General Stream Adjudication of the Little
5 Colorado River (“LCR”) System and Source situated in the Lower Basin (the “LCR
6 adjudication”).

7 I. In 1985, the Navajo Nation joined the proceedings and filed its original statement of
8 claims with respect to the LCR Basin.

9 J. The Navajo Nation has been a participant and party in the active litigation of certain
10 claims to groundwater and surface water by the Hopi Tribe in *In re the General*
11 *Adjudication of All Rights to Use Water in the Little Colorado River System and*
12 *Source*, Contested Case No. CV 6417-203 (the “Hopi Contested Case”) since 2016.
13 On May 25, 2022, the Special Master overseeing the case issued a recommended
14 decree that recognized a mere third of the rights that the Hopi Tribe claimed in its
15 Amended Statement of Claimant and established significant caps on the amount of
16 water the Hopi Tribe can pump for domestic, commercial, municipal, and light
17 industrial (“DCMI”) uses – even from aquifers underlying the Hopi Reservation. The
18 Special Master’s recommended decree is currently before the Superior Court judge.

19 K. In April 2023, the Special Master conducted the Phase I trial for the Navajo Nation’s
20 claims for DCMI, livestock, and wildlife watering uses in *In re the General*
21 *Adjudication of All Rights to Use Water in the Little Colorado River System and*
22 *Source*, Contested Case No. CV 6417-300 (the “Navajo Nation Contested Case”).
23 The Phase II trial of the Navajo Nation Contested Case concerning the Nation’s
24 remaining claims (cultural, unique tribal, recreation, fish, wildlife and conservation,
25 heavy industrial/commercial, and irrigation uses) is currently set to begin in 2027.

26 L. On April 15, 2023, a Leadership Meeting was held among President Buu Nygren,
27 Speaker Crystalyne Curley, the Naabik’iyáti’ Committee of the 25th Navajo Nation
28 Council, and the Navajo Nation Water Rights Commission wherein they committed
29 to commencing renewed efforts to settle the Navajo Nation’s comprehensive claims
30 to water rights in the State of Arizona. This has resulted in a negotiated settlement

1 titled Northeastern Arizona Indian Water Rights Settlement Agreement (the
2 “Settlement Agreement”) attached as **Exhibit A**.

3 M. On April 19, 2023, the Navajo Nation Water Rights Commission, by the authority
4 granted in its Plan of Operation, passed NNWRC-2023-005, thereby establishing a
5 Navajo Nation Water Rights Negotiation Team (the “Negotiation Team”) to
6 negotiate a water rights settlement with the State of Arizona and related parties, which
7 is attached as **Exhibit B**. The Negotiation Team is comprised of Council Delegates
8 from affected Arizona communities, representatives from the Executive Branch, legal
9 and technical staff from the Navajo Nation Department of Justice and the Navajo
10 Nation Department of Water Resources, and contracted consultants. Many members
11 of the Negotiation Team grew up without running water and know on a personal level
12 the daily hardship our Navajo People face in gaining access to the most basic of
13 human needs, and how hard it is to support a traditional Diné livestock raising and
14 farming way of life under those conditions.

15 N. On June 16, 2023, Negotiation Team members met with representatives of the Hopi
16 Tribe to re-initiate settlement discussions and made substantial progress in those
17 negotiations by October 2023.

18 O. On October 23, 2023, Negotiation Team members met with representatives from the
19 Office of Arizona Governor Katie Hobbs, the Arizona Department of Water
20 Resources, the Arizona State Land Department, the United States, and the other
21 parties to the LCR adjudication in Phoenix, Arizona and the parties made opening
22 statements in support of resuming negotiations for a comprehensive settlement of the
23 Navajo Nation and the Hopi Tribe’s water claims in the State of Arizona. Thereafter,
24 the parties began meeting on a regular basis to advance settlement negotiations. By
25 January 2024, the parties were meeting on a weekly and eventually bi-weekly basis
26 to timely complete negotiations.

27 P. In February 2024, at a critical stage of the negotiations, the non-tribal parties
28 requested that the United States include the San Juan Southern Paiute Tribe in the
29 negotiations, which was done.

30

- 1 Q. The Negotiation Team and the interested parties, including the United States, the
2 State of Arizona, the Hopi Tribe, and the San Juan Southern Paiute Tribe, proceeded
3 to negotiate to resolve all water rights claims in the State of Arizona for the Navajo
4 Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The Nation's
5 predominantly Navajo Negotiation Team, with the assistance of expert outside
6 counsel and technical staff, has fiercely protected and defended the rights of our
7 Navajo People to water throughout these negotiations.
- 8 R. For negotiation purposes, the Negotiation Team utilized the Navajo Nation's
9 compiled water budget that provided projections for the next 100 years so that the
10 negotiated settlement will ensure water for the Navajo People and the Navajo Nation
11 well into the future and sufficient to sustain a permanent homeland for the Navajo
12 People. The Negotiation Team also approached these negotiations with the intent of
13 securing funding for water delivery infrastructure that will provide meaningful access
14 to water for the Navajo People and the Navajo Nation for the long term, including
15 clean, safe, and reliable water delivered to our Navajo Peoples' homes.
- 16 S. In the settlement negotiations, the Negotiation Team also sought the unique flexibility
17 the Navajo Nation must have to be able to deliver water to all of the Navajo
18 communities spread over the vast Arizona portion of the Nation. A map of Navajo
19 Nation Lands is attached as **Exhibit C** (Exhibit 3.1.112a to the Settlement
20 Agreement). Specifically, the Negotiation Team sought and secured through these
21 negotiations the ability to divert Arizona water in any of the various states the Nation
22 extends into, and the ability to use Arizona Upper Basin Water in the Nation's
23 Arizona Lower Basin communities, and vice versa. A Map of Navajo Nation Water
24 Rights Claims is attached as **Exhibit D**. This flexibility is vital to water security for
25 the Navajo People because it will allow for the dynamic and adaptive Navajo Nation
26 global water delivery system necessary to meet the Nation's expected future
27 population demands and mitigate intensifying climate conditions and ensure a
28 permanent homeland for the Navajo People from time immemorial and thereafter –
29 forever.
- 30

- 1 T. While the Navajo Nation fully intends to utilize its enforceable water rights to close
2 the vast equity gap that exists between Navajo People at the household level and other
3 Americans by delivering safe, potable, piped water to the more than one-third of
4 Navajo homes on the Navajo Reservation in Arizona that currently lack access to
5 clean, safe, and reliable water, the Negotiation Team also secured a settlement that
6 allows the Nation to defray construction, operation, and maintenance costs through
7 water lease and exchanges revenues while the Navajo Nation's population grows into
8 the infrastructure supporting the Nation's claims in the Settlement Agreement.
- 9 U. The Settlement Agreement, once approved and ratified by Congress, will recognize
10 the enforceable water rights of the Navajo Nation, the Hopi Tribe, and the San Juan
11 Southern Paiute Tribe in Arizona and will provide vital funding for the infrastructure
12 development that is critical to securing for the Navajo People equal access to water
13 that other Americans enjoy and that is a basic human right. This is critical to fulfilling
14 the current and future needs of the Navajo People in the Arizona portion of the Navajo
15 Reservation, and to creating a pathway home for Navajo People who have left the
16 Navajo Reservation due to the severe water infrastructure deficiencies and chronic
17 lack of access to water for basic household, commercial, and industrial use that has
18 long stymied health and economic growth and prosperity on the Navajo Reservation.
19 This is also essential to ensuring the permanency of the Navajo homeland so that the
20 Navajo People may forever remain within our four sacred mountains and bounded by
21 our four protecting rivers.
- 22 V. The Settlement Agreement, once adopted by Congress, will bind all bands of Navajo
23 People and chapters of the Navajo Nation, as well as all entities, agencies, divisions,
24 departments, and programs thereof.
- 25 W. The 118th Congress and the current Administration support tribal water rights
26 settlements. The Settlement Agreement should be submitted as soon as possible and
27 in accordance with the current congressional schedule for its consideration during
28 this favorable time.
- 29 X. The Settlement Agreement, once approved and ratified by Congress, will recognize
30 the water rights of the Navajo Nation in the State of Arizona and provide billions of

1 dollars' worth of funding for infrastructure development that the Nation must build
2 in order to meet the anticipated future population of the Navajo People and the growth
3 demands of the Navajo Nation. The terms of the negotiated Settlement Agreement
4 are summarized below (this summary is designed to make the contents of the
5 Settlement Agreement more easily accessible; the text of the Settlement Agreement
6 should be referred to for the actual terms of the settlement and shall control in the
7 event of any inconsistencies or omissions):

8 1. Paragraph 1.0 – Introduction. The introduction sets forth the purpose of the
9 Settlement Agreement, which is to resolve, fully and finally, any and all
10 claims to water from any source in the State of Arizona by: The Navajo
11 Nation on behalf of the Navajo Nation and the Members of the Navajo Nation;
12 the Hopi Tribe on behalf of the Hopi Tribe and the Members of the Hopi
13 Tribe; the San Juan Southern Paiute Tribe on behalf of the San Juan Southern
14 Paiute Tribe and the Members of the San Juan Southern Paiute Tribe; the
15 United States acting as trustee for the Navajo Nation, the Hopi Tribe, the San
16 Juan Southern Paiute Tribe, and the Members of the Navajo Nation, the
17 Members of the Hopi Tribe and the Members of the San Juan Southern Paiute
18 Tribe; and the United States acting as trustee for Navajo Allottees and Hopi
19 Allottees.

20 2. Paragraph 2.0 – Parties. The parties to the settlement are the United States of
21 America; the State of Arizona; the Navajo Nation; the Hopi Tribe; the San
22 Juan Southern Paiute Tribe; the Central Arizona Water Conservation District;
23 the Salt River Project Agricultural Improvement and Power District; the Salt
24 River Valley Water Users' Association; the Arizona cities and towns of
25 Flagstaff, Winslow, Holbrook, Taylor, Snowflake, Show Low, Eagar,
26 Springerville, and St. Johns; Arizona Public Service Company; Bar T Bar
27 Ranch, Inc.; Bar T Bar Ranch Company, LLP; Meteor Crater Enterprises,
28 Inc.; Crater Ranch, LLC; Flying M Ranch, Inc.; Aztec Land and Cattle
29 Company, Limited; Aztec Land Company, LLC; Arizona State Land
30 Department; Arizona Game and Fish Commission; Arizona Department of

1 Transportation; Grover's Hill Irrigation District; J. Albert Brown Ranches,
2 Inc.; Pioneer Irrigation Company; Show Low/Pinetop-Woodland Irrigation
3 Company; Silver Creek Irrigation District; Lakeside Irrigation Company;
4 Little Colorado Water Conservation District; Forest Lakes Domestic Water
5 Improvement District; Pinetop-Lakeside Sanitary District; Porter Springs,
6 LLC; and Atkinson Trading Company, Inc.

7 3. Paragraph 3.0 – Definitions and Exhibits. This paragraph defines key terms
8 to avoid future controversy concerning interpretation of the Settlement
9 Agreement, and also lists all of the exhibits to the Settlement Agreement.

10 4. Paragraph 4.0 – Water Rights of the Navajo Nation and Navajo Allottees. This
11 paragraph identifies the Navajo Nation's water rights in Arizona, which are:

12 a. Underground Water: The right to use all underground water on the
13 Navajo Reservation, subject to the inter-tribal agreement in
14 Paragraph 7.0 regarding the N-Aquifer.

15 b. Effluent: The right to effluent developed on the Navajo Reservation
16 for any purpose determined by the Navajo Nation; developed off of
17 the Reservation on trust land and allotments on those lands for any
18 purpose determined by the Navajo Nation in accordance with
19 applicable law; and developed on Navajo-owned fee land located
20 outside of the Reservation consistent with Arizona state law.

21 c. Springs: The right to all springs on the Navajo Reservation, subject
22 to the inter-tribal agreement in Paragraph 7.0.

23 d. Little Colorado River Tributaries: The right to divert and deplete all
24 surface waters of the Little Colorado River tributary streams that
25 reach the Navajo Reservation, but without diminishment of or
26 interference with existing non-tribal water rights on such streams.

27 e. Little Colorado River Mainstem: The right to divert and deplete all
28 surface waters of the Little Colorado River that reach the Navajo
29 Reservation, including specifically identified water rights and
30 priorities for certain lands, without the right to make calls against

1 existing upstream or downstream off-Reservation water users with
2 respect to such mainstem water, and with the right to make calls
3 against new upstream or downstream off-Reservation water users.
4 A map of the LCR Basin is attached as **Exhibit E** (Exhibit 3.1.83 to
5 the Settlement Agreement).

6 f. Navajo Nation Upper Basin Colorado River Water: The right to
7 44,700 acre-feet per year of Arizona's allocation of Upper Basin
8 Colorado River Water that may be diverted in Arizona, New
9 Mexico, or Utah and be transported and used on the Navajo
10 Reservation within Arizona whether located in the Upper Basin or
11 the Lower Basin, and be stored in the Frank Chee Willetto, Sr.
12 Reservoir or the Navajo Reservoir in New Mexico or in
13 underground storage facilities in Arizona, and may be leased or
14 exchanged by the Navajo Nation for use in Arizona, and be
15 transported using Central Arizona Project ("CAP") facilities.

16 g. Navajo Nation Cibola Water: The right to 100 acre-feet per year of
17 Hopi Tribe Cibola Water, if used in the same location and for the
18 same irrigation purpose as in the Hopi Tribe Cibola contract, or 71.5
19 acre-feet per year if used in other locations or for a different purpose,
20 that may be diverted in Arizona, New Mexico, or Utah and be
21 transported and used on the Navajo Reservation within Arizona
22 whether located in the Upper Basin or the Lower Basin, and be
23 stored in either of the two New Mexico reservoirs or in underground
24 storage facilities in Arizona, and may be leased or exchanged by the
25 Nation for use in Arizona, and be transported using CAP facilities.

26 h. Navajo Nation Fourth Priority Water: The right to 3,500 acre-feet
27 per year of Fourth Priority Colorado River Water that may be
28 diverted in Arizona, New Mexico, or Utah and transported and used
29 on the Navajo Reservation within Arizona whether located in the
30 Upper Basin or the Lower Basin, stored in either of the two New

1 Mexico reservoirs or in underground storage facilities in Arizona,
2 leased or exchanged by the Nation for use in Arizona, and
3 transported using CAP facilities.

4 i. Navajo Allottee Water Rights: On-Reservation (non-public
5 domain) Navajo allottees shall have the right to use an allocable
6 portion of the Navajo Nation's water rights, solely on and limited to
7 the allotment, in accordance with Navajo Nation law.

8 j. Water Rights for Fee Lands as of the Effective Date, between the
9 Effective Date and the Enforceability Date, and after the
10 Enforceability Date in the LCR watershed: The Settlement
11 Agreement establishes procedures for preparation of abstracts
12 summarizing such water rights or uses held by persons in the LCR
13 watershed and for the incorporation of such water rights into the
14 LCR decree, and once incorporated into the decree, such water
15 rights shall not be subject to objection by the parties to the LCR
16 adjudication.

17 k. Water Rights for Lands Held in Trust by the United States for the
18 Navajo Nation as of the Effective Date, between the Effective Date
19 and the Enforceability Date, and after the Enforceability Date in the
20 LCR watershed: The Settlement Agreement establishes procedures
21 for preparation of abstracts of such water rights and for
22 incorporation of such water rights into the LCR decree, and once
23 incorporated into the decree, such water rights shall not be subject
24 to objection by the parties to the LCR adjudication.

25 l. Water Rights for Fee Lands as of the Effective Date, between the
26 Effective Date and the Enforceability Date, and after the
27 Enforceability Date in the Verde River Subwatershed in the Gila
28 River Adjudication: The Settlement Agreement establishes
29 procedures for preparation of abstracts of such water rights and for
30 the incorporation of such water rights into the Gila River decree, and

1 once incorporated into the decree, such water rights shall not be
2 subject to objection by the parties to the Gila River adjudication.

3 m. Water Rights for Lands Held in Trust by the United States for the
4 Navajo Nation as of the Effective Date, between the Effective Date
5 and the Enforceability Date, and after the Enforceability Date in the
6 Verde River Subwatershed in the Gila River Adjudication: The
7 Settlement Agreement establishes procedures for preparation of
8 abstracts of such water rights and for the incorporation of such water
9 rights into the Gila River decree, and once incorporated into the
10 decree, such water rights shall not be subject to objection by the
11 parties to the Gila River adjudication.

12 n. The right to withdraw water or drill wells on the Navajo Reservation
13 without objection by the other parties.

14 o. The right to use underground water, springs, LCR tributary water,
15 and LCR mainstem water anywhere on the Navajo Reservation and
16 on off-Reservation trust land in Arizona.

17 p. The right to use Upper Basin Colorado River Water, Cibola Water,
18 and Fourth Priority Water anywhere on the Navajo Reservation, or
19 off of the Reservation, but within the State of Arizona.

20 q. The right to provide water for municipal use off of the Navajo
21 Reservation from facilities physically connected to facilities on the
22 Reservation in Arizona.

23 r. The right to initiate new surface water uses for irrigation by means
24 of direct diversion of surface water on the Navajo Reservation,
25 subject to limitations set forth in the Settlement Agreement.

26 Under this paragraph, the Settlement Agreement requires the Navajo Nation
27 to report to the Arizona Department of Water Resources (“ADWR”) all water
28 diversion amounts, points of diversion, places of use, storage, leases and
29 exchanges of Upper Basin Colorado River Water, Cibola Water, and Fourth
30 Priority Water, and to install measuring devices near points of diversion.

1 5. Paragraph 5.0 – Water Rights of the Hopi Tribe and Hopi Allottees. This
2 paragraph identifies the Hopi Tribe’s water rights in Arizona, which are:

3 a. Underground Water: The right to use all underground water on the
4 Hopi Reservation, subject to the inter-tribal agreement in
5 Paragraph 7.0 regarding the N-Aquifer.

6 b. Effluent: The right to effluent developed on the Hopi Reservation
7 for any purpose determined by the Hopi Tribe; developed off of the
8 Reservation on trust land for any purpose determined by the Hopi
9 Tribe in accordance with applicable law; and developed on Hopi-
10 owned fee land located off of the Reservation consistent with
11 Arizona state law.

12 c. Surface Water: The right to divert and deplete all surface water that
13 reaches or flows within the Hopi Reservation.

14 d. Springs: The right to all springs on the Hopi Reservation, subject to
15 the inter-tribal agreement in Paragraph 7.0.

16 e. Hopi Tribe Upper Basin Colorado River Water: The right to 2,300
17 acre-feet per year of Arizona’s allocation of Upper Basin Colorado
18 River water, for transport and use anywhere on the Hopi Reservation
19 and within Arizona whether located in the Upper Basin or Lower
20 Basin, for storage in underground storage facilities in Arizona, for
21 lease and exchange, and which may be transported using CAP
22 facilities.

23 f. Hopi Tribe Cibola water: The right to 4,178 acre-feet per year of
24 Fourth Priority Water, 750 acre-feet per year of Fifth Priority Water,
25 and 1,000 acre-feet per year of Sixth Priority Water for use only
26 within the State of Arizona, consistent with the provisions of the
27 Hopi Tribe Cibola contract, or if outside such contractual
28 provisions, then according to a consumptive use calculation by the
29 Secretary of the Interior (or the “Secretary”), for storage in
30

1 underground storage facilities in Arizona, for lease and exchange,
2 and which may be transported using CAP facilities.

- 3 g. Hopi Allottees: Hopi allottees' rights are settled and described in
4 abstracts and are held in trust by the United States for the benefit of
5 the Hopi allottees.
- 6 h. Water Rights for Fee Lands as of the Effective Date, between the
7 Effective Date and the Enforceability Date, and after the
8 Enforceability Date in the LCR watershed: The Settlement
9 Agreement establishes procedures for preparation of abstracts of
10 such water rights and for the incorporation of such water rights into
11 the LCR decree, and once incorporated into the decree, such water
12 rights shall not be subject to objection by the parties to the LCR
13 adjudication.
- 14 i. Water Rights for Lands Held in Trust by the United States for the
15 Hopi Tribe as of the Effective Date, between the Effective Date and
16 the Enforceability Date, and after the Enforceability Date in the
17 LCR watershed: The Settlement Agreement establishes procedures
18 for preparation of abstracts of such water rights and for the
19 incorporation of such water rights into the LCR decree, and once
20 incorporated into the decree, such water rights shall not be subject
21 to objection by the parties to the LCR adjudication.
- 22 j. The right to withdraw water or drill wells on trust or off-Reservation
23 fee or trust lands.
- 24 k. The right to use underground water, surface water, and springs
25 anywhere on the Hopi Reservation.
- 26 l. The right to use Upper Basin Colorado River Water and Cibola
27 Water anywhere on the Hopi Reservation, or off of the Reservation
28 but within the State of Arizona.
- 29
30

1 m. The right to provide water for municipal use off of the Hopi
2 Reservation from facilities physically connected to facilities on the
3 Reservation.

4 n. The right to subordinate senior rights under the Norviel Decree to
5 junior users. (The Norviel Decree is a decision from a 1918 Arizona
6 Superior Court for the County of Apache settling the water rights of
7 a small portion of the LCR watershed in Apache County; it includes
8 the water rights for certain fee lands purchased by the Hopi Tribe
9 near Eager, Arizona (the 26 Bar Ranch).)

10 Under this paragraph, the Settlement Agreement requires the Hopi Tribe to
11 report to the Arizona Department of Water Resources all water diversion
12 amounts, points of diversion, places of use, storage, leases and exchanges of
13 Upper Basin Colorado River Water and Cibola Water, and to install
14 measuring devices near points of diversion.

15 6. Paragraph 6.0 – San Juan Southern Paiute Tribe Land and Water Rights.

16 a. This paragraph proclaims the San Juan Southern Paiute Reservation,
17 including water rights, consisting of 5,400 acres of land within the
18 Navajo Reservation and described in the Treaty and Treaty
19 Addendum as the San Juan Southern Paiute Northern Area
20 (“Northern Area”) and the San Juan Southern Paiute Southern Area
21 (“Southern Area”), which lands shall be held in trust by the United
22 States for the benefit of the San Juan Southern Paiute Tribe.

23 b. This paragraph identifies the San Juan Southern Paiute Tribe’s water
24 rights in Arizona, which are:

25 i. The right to all underground water on the Southern Area.

26 ii. The right to all effluent developed by the San Juan
27 Southern Paiute Tribe for use on the Southern Area for
28 any purpose determined by the Tribe; developed off of
29 the Southern Area on trust land in accordance with
30 applicable law; and developed on San Juan Southern

1 Paiute Tribe fee land located outside of the Southern
2 Area consistent with Arizona state law.

3 iii. Surface Water: The right to divert and deplete all surface
4 water that reaches or flows within the Southern Area.

5 iv. Springs: The right to all springs on the Southern Area.

6 v. The right to water delivered by the Navajo Nation
7 through a service agreement with the Navajo Tribal
8 Utility Authority (“NTUA”) to the Southern Area, in an
9 amount not to exceed 350 acre-feet per year.

10 vi. Water Rights for Fee Lands as of the Effective Date,
11 between the Effective Date and the Enforceability Date,
12 and after the Enforceability Date in the LCR watershed:
13 The Settlement Agreement establishes procedures for
14 preparation of abstracts of such water rights and for the
15 incorporation of such water rights in the LCR decree, and
16 once incorporated in the decree, such water rights shall
17 not be subject to objection by the parties to the LCR
18 adjudication.

19 vii. Water Rights for Lands Held in Trust by the United
20 States for the San Juan Southern Paiute Tribe as of the
21 Effective Date, between the Effective Date and the
22 Enforceability Date, and after the Enforceability Date in
23 the LCR watershed: The Settlement Agreement
24 establishes procedures for preparation of abstracts of
25 such water rights and for the incorporation of such water
26 rights in the LCR decree, and once incorporated in the
27 decree, such water rights shall not be subject to objection
28 by the parties to the LCR adjudication.

1 viii. Underground water, surface water, and NTUA delivered
2 water may not be used off of the Southern Area or off of
3 trust land.

4 7. Paragraph 7.0 – Navajo Nation and Hopi Tribe Inter-Tribal Agreement for
5 Uses of the Managed Washes and N-Aquifer.

6 a. This paragraph sets forth the inter-tribal agreement between the
7 Navajo Nation and the Hopi Tribe regarding the uses and
8 management of managed washes, minor tributary washes, springs,
9 and the N-Aquifer, and identifies certain obligations of the United
10 States. *See* map of N-Aquifer Boundary Springs attached as **Exhibit**
11 **F** (Exhibit 7.2.3.5.3 to the Settlement Agreement).

12 b. Tribal Wash Management: Each Tribe has the right to use water
13 flowing in washes on each Reservation upstream of the other Tribe’s
14 Reservation. This paragraph does not apply to any water use
15 downstream of the southern boundary of the Hopi Reservation.

16 i. Historic and existing irrigation uses as of the Effective
17 Date may continue without objection by the parties to the
18 LCR adjudication, and any dispute between the Tribes
19 regarding such uses shall be resolved pursuant to the
20 dispute resolution provision of the inter-tribal
21 agreement. *See* map of Designated Historic Irrigation
22 Project General Location attached as **Exhibit G** (Exhibit
23 7.1.1.2D to the Settlement Agreement). Rehabilitation
24 and betterment of existing structures is permitted.

25 ii. New surface water impoundments in the washes are
26 permitted only to prevent erosion and incision, and to
27 enhance wash recharge, and each Tribe must notify the
28 other of impoundment construction that will store more
29 than 15 acre-feet per year, or of relocation of an existing
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1 impoundment. Greater storage is only permitted with the
2 prior written consent of the other Tribe.

3 iii. The Hopi Tribe may construct new surface water
4 impoundments on lands awarded to it in the 1934 Act
5 case, not to exceed a total capacity of 300 acre-feet.

6 iv. Pasture Canyon flows are exclusively for the Hopi Tribe,
7 except for Navajo rights recognized in the 1934 Act case,
8 and upstream uses existing as of the Effective Date.

9 v. The Navajo Nation and the Hopi Tribe agree to jointly
10 investigate the feasibility of Moenkopi Wash alluvial
11 aquifer storage and the rehabilitation and betterment of
12 the Kerley Valley Project.

13 vi. The Tribes agree to cooperate in monitoring stream
14 flows in the managed washes.

15 vii. The Tribes agree to cooperate on watershed restoration
16 efforts, including implementing low technology
17 watershed restoration methods, and where such activities
18 are planned to occur on the major tributary washes or on
19 minor tributary washes located on the Reservation of the
20 other Tribe, with prior consent of the other Tribe.

21 viii. Water uses in sub-basins located in a managed wash or
22 minor tributary wash that do not contribute to any
23 surface flow outside of that sub-basin are not subject to
24 these restrictions. *See* map of On Reservation Closed
25 Basins attached as **Exhibit H** (Exhibit 3.1.21b to the
26 Settlement Agreement).

27 c. This paragraph applies to the use by either or both Tribes of
28 underground water from the N-Aquifer, and identifies pumping
29 limits to which both Tribes agree in order to protect the N-Aquifer.
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- i. Total pumping from the confined N-Aquifer and the Shonto Recharge Area shall not exceed 14,000 acre-feet per year. Of the total limit, pumping by the Navajo Nation shall not exceed 8,400 acre-feet per year and pumping by the Hopi Tribe shall not exceed 5,600 acre-feet per year. No more than 2,000 acre-feet per year may be pumped for industrial uses by each Tribe. *See* Map of the Extent and Confined Portion of N-Aquifer within the LCR Basin attached as **Exhibit I** (Exhibit 3.1.24 to the Settlement Agreement) and Map of the N-Aquifer attached as **Exhibit J** (Exhibit 3.1.96 to the Settlement Agreement).
 - ii. Domestic and municipal uses of water from the N-Aquifer have priority.
 - iii. New wells may be developed after the Effective Date with notice to the other Tribe, however, no new wells may be developed in the restricted zone which is one-half mile on either side of the Navajo-Hopi boundary line. *See* map of N-Aquifer Restricted Buffer Zone attached as **Exhibit K** (Exhibit 3.1.138 to the Settlement Agreement).
 - iv. The Tribes agree to develop interconnection infrastructure between NTUA and Moenkopi.
 - v. The Tribes agree that the United States, through the United States Geological Survey (“USGS”), will continue to monitor the N-Aquifer, prepare assessment reports, and conduct modeling of the aquifer to predict its long-term viability, and the USGS will meet periodically with the Tribes to discuss these monitoring analyses.

1 vi. The Tribes agree to jointly work to secure funding for
2 the USGS monitoring activities, which may include
3 contribution of funds from both Tribes.

4 d. The inter-tribal agreement establishes a dispute resolution procedure
5 to resolve disputes arising under the inter-tribal agreement and
6 creates a special inter-tribal commission for dispute resolution
7 whose decisions are final and binding on both Tribes.

8 e. The inter-tribal agreement establishes notice provisions for all
9 notices required under this paragraph.

10 8. Paragraph 8.0 – Off-Reservation Uses of Surface Water

11 a. This paragraph identifies the permitted and prohibited existing and
12 future surface water claims and uses outside of the Navajo, Hopi,
13 and San Juan Southern Paiute Reservations in the LCR watershed.

14 b. Certain listed claimants are required to submit abstracts of existing
15 surface water rights claims and uses, and the Tribes agree not to
16 object to those water rights or their inclusion in the LCR decree.
17 The Tribes also agree not to object to existing surface water rights
18 claims and uses that are not listed in abstracts as of the Effective
19 Date. The claimants submitting abstracts may not claim any storage
20 rights that exceed the existing storage capacity described in the
21 abstracts, the Tribes may object to any claim that does exceed the
22 amounts in the abstracts, and the Hopi Tribe may exercise rights of
23 priority for its rights set forth in the Norviel decree.

24 c. The parties, including the Tribes and the United States, agree to be
25 bound by the Zuni settlement, final judgment and decree.

26 d. New off-Reservation surface water uses may be made in accordance
27 with the Settlement Agreement, as follows:

28 i. The parties may make new surface water uses in
29 accordance with state law and the terms of the Settlement
30 Agreement, and the Tribes may make new surface water

1 uses in accordance with Paragraphs 4.0 (Navajo Nation
2 water rights), 5.0 (Hopi Tribe water rights), and 6.0 (San
3 Juan Southern Paiute Tribe water rights).

4 ii. Except as provided in specific provisions of the
5 Settlement Agreement, the Tribes, and the United States
6 acting as trustee, agree not to object to or challenge new
7 surface water uses, but the Tribes and the United States
8 acting as trustee retain the right to place a call or exercise
9 rights of priority against new surface water uses based
10 on rights to the use of surface water arising under state
11 law or the Settlement Agreement that are associated with
12 land owned in fee by a Tribe or Off-Reservation land
13 held in trust by the United States for the benefit of a
14 Tribe.

15 iii. No new surface water uses for irrigation may be made by
16 direct stream diversion, including a prohibition against
17 new direct stream diversions in the Three Canyon Area
18 and in the area governed by the Norviel decree, and the
19 Tribes retain the right to object to any such direct stream
20 diversions in contravention of the Settlement
21 Agreement.

22 iv. The United States agrees not to object on behalf of public
23 domain allottees to new surface water uses.

24 e. The Tribes agree not to object to the withdrawal and use of
25 off-Reservation subflow.

26 i. This agreement not to object includes the two wells used
27 by Atkinson Trading Company (“Atkinson”) near
28 Cameron, or any well developed to replace those two
29 wells, and the Navajo Nation agrees to meet and confer
30

1 with Atkinson should the Navajo Nation determine to
2 develop wells in the area.

3 f. The parties agree not to construct new off-Reservation reservoirs,
4 except as follows:

5 i. If the new reservoir is wholly contained in a closed basin.
6 See map of Off Reservation Closed Basin attached as
7 **Exhibit L** (Exhibit 3.1.21a to the Settlement
8 Agreement).

9 ii. If the new reservoir is located in the lower LCR
10 watershed and the water is stored for municipal uses in
11 the lower LCR watershed.

12 iii. If the new reservoir stores water that becomes available
13 as a result of a change in place or purpose of use, or
14 change in point of diversion within the same watershed.

15 iv. If the new reservoir has no permanent storage and is
16 operated solely for flood control.

17 v. If the new reservoir is C.C. Cragin Reservoir (which
18 transports water outside of the lower LCR watershed), or
19 the Lake Mary Reservoirs (which serve municipal uses
20 by Flagstaff).

21 vi. If the new reservoir impounds effluent.

22 vii. If the new reservoir impounds tailwater.

23 viii. If the new reservoir impounds underground water.

24 g. The Navajo Nation may construct new off-Reservation reservoirs or
25 expand existing off-Reservation reservoirs in accordance with state
26 law in the lower LCR watershed, such as McHood Reservoir, but
27 may not construct new reservoirs in the Upper Clear Creek, Lower
28 Clear Creek, and Walnut Creek hydrologic units.

29 h. The Hopi Tribe has the right to share up to 50% of stored water
30 available for Navajo Nation off-Reservation storage projects

1 bordering Hopi lands, including any enlargement of McHood
2 Reservoir, if the Hopi Tribe pays for its share of related costs, and
3 the Hopi Tribe agrees to grant easements to the Navajo Nation for
4 any storage project in the Three Canyon Area.

5 i. The Navajo Nation and the United States as trustee to the Nation or
6 Navajo allottees agree not to object to reservoir or impoundment
7 operation, maintenance, and modification activities that are done in
8 accordance with the Settlement Agreement, but the Nation and the
9 United States as trustee to the Nation or Navajo allottees retain the
10 right to object to such activities that are not in accordance with the
11 settlement, and the LCR adjudication court has exclusive
12 jurisdiction to resolve such objections. Any objection must
13 demonstrate that the reservoir operation, maintenance, or
14 modification causes injury to rights to surface water.

15 j. The parties agree not to object to new off-Reservation reservoirs
16 constructed in accordance with the Settlement Agreement, but retain
17 the right to object to such activities that are not in accordance with
18 the settlement, and the LCR adjudication court has exclusive
19 jurisdiction to resolve such objections.

20 k. The Tribes, and the United States as trustee, agree to file any
21 application for severance and transfer, change in place of use or
22 purposes of use, or change in point of diversion of a decreed off-
23 Reservation surface water right in the LCR adjudication court,
24 which court shall conduct hearings on such application; and also
25 agree not to object to applications for severance and transfer, change
26 in place of use or purpose of use, or change in point of diversion of
27 an off-Reservation surface water right or relocation of an existing
28 off-Reservation reservoir within the same watershed of the LCR,
29 unless:
30

- i. The Hopi Tribe can demonstrate that the application will cause injury to its rights under the Norviel decree.
- ii. The application will result in a storage capacity of greater than 500 acre-feet (except for storage capacity for the C.C. Cragin Reservoir and the Lake Mary Reservoirs), and will cause injury to rights to surface water.

l. Other than with respect to the C.C. Cragin Reservoir and the Lake Mary Reservoirs, no party may transport surface water diverted within the LCR watershed outside of the LCR watershed. The Tribes, the United States, and other parties retain the right to object to any person that constructs and operates a reservoir in violation of the Settlement Agreement.

m. The Tribes and the parties agree not to object to any existing surface water use in the LCR watershed, including the Hopi Tribe's rights in the Norviel decree, based upon forfeiture or abandonment.

n. The Navajo Nation bears the burden of proof when asserting claims for injury to rights to surface water.

9. Paragraph 9.0 – Off-Reservation Groundwater Withdrawals and Uses Within the LCR watershed, including Buffer Zones 1 and 2 south of the Navajo Reservation. *See* map of the Buffer Zones attached as **Exhibit M** (Exhibit 3.1.12 to the Settlement Agreement).

a. This paragraph applies to groundwater withdrawals and uses within the LCR watershed and outside of the Navajo, Hopi, and San Juan Southern Paiute Reservations.

b. The Tribes agree not to object to the withdrawal or use of groundwater from any off-Reservation well located outside of Buffer Zones 1 and 2, including replacement wells.

c. ADWR agrees to catalog all existing wells located inside of Buffer Zones 1 and 2, other than existing wells owned in trust by the United

1 States for the benefit of a Tribe and the LCR adjudication court shall
2 distribute the catalog, once completed, to the court approved mailing
3 list and existing well owners.

4 i. Certain persons may object to the catalog on the basis of
5 omission or inaccurate information regarding wells in
6 the catalog.

7 ii. Any wells not included in the catalog shall be treated as
8 new wells.

9 d. Within Buffer Zone 1, the Tribes may object to existing wells if they
10 withdraw more water than set forth in the catalog, and within Buffer
11 Zone 2, the Tribes may object to existing wells if they withdraw
12 more water than set forth in the catalog, or more than the greater of
13 500 gallons per minute (“GPM”) or a volume of 800 acre-feet per
14 year.

15 e. Existing wells within the buffer zones may be replaced, with limits
16 on total well capacity and location of the replacement wells.

17 f. Exempt wells (pumps no more than 35 GPM) within the buffer
18 zones are not included in the ADWR catalog and are not subject to
19 objection.

20 g. If a new non-exempt well (a well that pumps more than 35 GPM) is
21 drilled within Buffer Zone 1, the Navajo Nation retains rights to
22 assert a claim for injury to rights to groundwater caused by such new
23 well.

24 h. If a new non-exempt well is drilled within Buffer Zone 2, the Navajo
25 Nation retains rights to assert a claim for injury to rights to
26 groundwater for wells greater than 500 GPM capacity, unless the
27 new well complies with well spacing configurations. Certain
28 additional constraints apply to wells developed on Arizona State
29 Land Department lands.
30

- 1 i. The Navajo Nation has the burden of proof when asserting claims
2 for injury to rights to groundwater.
- 3 j. ADWR will assert reasonable efforts to notify all persons intending
4 to drill a new well or replace an existing well in the buffer zones that
5 they are subject to potential claims by the Tribes.
- 6 k. An additional agreement among the Navajo Nation, Hopi Tribe,
7 United States as trustee for the Tribes, Bar T Bar Ranch, and the
8 Arizona State Land Department is attached to the Settlement
9 Agreement and identifies additional buffers and restrictions on well
10 development. (*See* Section Four below for a discussion of this
11 agreement.)

12 10. Paragraph 10.0 – Navajo Nation Water Delivery Contracts and Related
13 Provisions.

- 14 a. This paragraph requires the Secretary of the Interior to enter into
15 contracts with the Navajo Nation for delivery and use of the Navajo
16 Nation Upper Basin Colorado River Water, Navajo Nation Cibola
17 Water, and Navajo Nation Fourth Priority Water and sets forth the
18 terms and conditions for the contracts.
- 19 b. The Navajo Nation agrees that Navajo Nation Cibola Water and
20 Navajo Nation Fourth Priority Water may be curtailed to the same
21 extent as other non-CAP Fourth Priority Colorado River Water
22 supplies in times of shortage.
- 23 c. The Navajo Nation may lease and store its water which is delivered
24 pursuant to contracts with the Secretary on the Reservation in
25 accordance with Navajo law. The Navajo Nation may lease,
26 exchange, and store its water delivered pursuant to contracts with
27 the Secretary off of the Reservation with the approval of the
28 Secretary and with the Central Arizona Water Conservation
29 District's (CAWCD) approval of the leased, exchanged, or stored
30 water if the water will be transported through the CAP system. The

1 lessee is responsible for all charges and fees, and the Navajo Nation
2 is entitled to all compensation under any contracts to lease, options
3 to lease, contracts to exchange, or options to exchange the Navajo
4 Nation Upper Basin Colorado River Water, Navajo Nation Cibola
5 Water, and Navajo Nation Fourth Priority Water.

6 11. Paragraph 11.0 – Hopi Tribe Water Delivery Contracts and Related
7 Provisions.

- 8 a. This paragraph requires the Secretary of the Interior to enter into
9 contracts with the Hopi Tribe for delivery and use of the Hopi Tribe
10 Upper Basin Colorado River and Hopi Tribe Cibola Water and sets
11 forth the principal terms and conditions for the contracts.
- 12 b. The Hopi Tribe agrees that its Cibola Water may be curtailed to the
13 same extent as other non-CAP Colorado River Water supplies of the
14 same classification in times of shortage.
- 15 c. The Hopi Tribe may lease, exchange, and store its water which is
16 delivered pursuant to contracts with the Secretary on the
17 Reservation in accordance with Hopi law, and off of the Reservation
18 with the approval of the Secretary and with CAWCD's approval of
19 the leased, exchanged, or stored water if the water will be
20 transported through the CAP system. The lessee is responsible for
21 all charges and fees, and the Hopi Tribe is entitled to all
22 compensation under any contracts to lease, options to lease,
23 contracts to exchange, or options to exchange the Hopi Tribe Upper
24 Basin Colorado River Water and Hopi Tribe Cibola Water.

25 12. Paragraph 12.0 – Infrastructure, Funding and Related Support.

- 26 a. This paragraph establishes a non-trust fund known as the iiná bá –
27 paa tuwaqat'si pipeline Implementation Fund Account, and a series
28 of trust funds to which money will be deposited for use by the Tribes
29 and the United States to plan, design, construct, operate, and
30 maintain water supply infrastructure to the Navajo, Hopi, and San

1 Juan Southern Paiute Southern Area Reservations, as well as trust
2 and fee lands outside of the Reservations and funds to support those
3 efforts.

4 b. The iiná bá – paa tuwaqat’si pipeline Implementation Fund Account
5 will consist of \$1.715 billion, together with interest and any
6 additional funding authorized in the settlement act, by which the
7 Bureau of Reclamation will plan, design, and construct the iiná bá –
8 paa tuwaqat’si pipeline on the Navajo Reservation, Hopi
9 Reservation, and San Juan Southern Paiute Southern Area to
10 transport water from Lake Powell to the Reservation communities
11 for domestic, commercial, municipal, and industrial water uses.

12 i. There shall be a project construction committee
13 consisting of the Bureau of Reclamation, Bureau of
14 Indian Affairs, Navajo Nation, Hopi Tribe, and the San
15 Juan Southern Paiute Tribe to participate in project
16 planning.

17 ii. The Navajo Nation and the Hopi Tribe agree to execute
18 a project operations agreement to address water
19 distribution, operation and maintenance of the pipeline,
20 allocation of payment for operation and maintenance,
21 and the right to sue in federal district court to enforce the
22 agreement.

23 c. Navajo Nation Water Settlement Trust Fund. The Settlement
24 Agreement establishes trust funds for the benefit of the Navajo
25 Nation, as follows:

26 i. The Navajo Nation Water Projects Trust Fund Account
27 consists of \$2.3692 billion for specified projects on the
28 Navajo Reservation to provide Reservation communities
29 with potable water, storage water and other water
30 infrastructure.

1 to the United States for planning, design, construction, access,
2 operation, maintenance, modification, and replacement of the iiná
3 bá – paa tuwaqat’si pipeline and (2) grants of rights-of-way for
4 planning, design, construction, access, operation, maintenance,
5 modification, and replacement of the other projects identified and
6 funded by the settlement.

7 g. The Navajo Nation’s consent to the United States for a right-of-way
8 for the iiná bá – paa tuwaqat’si pipeline will be perpetual and
9 without charge or other consideration from the United States,
10 including a waiver of any right to tax the right-of-way.

11 h. Each Tribe shall timely consent to the grant of perpetual, non-
12 exclusive rights-of-way to the other Tribes, for purposes of coming
13 upon and using land within the consenting Tribe’s Reservation to
14 plan, design, construct, access, operate, maintain, modify, and
15 replace the tribal water projects authorized in the Settlement
16 Agreement and any infrastructure reasonably necessary to operate
17 said projects, without charge or other payment or consideration from
18 the other Tribes, excepting surface damages, and waiving any tax of
19 such rights-of-way.

20 i. The Hopi Tribe agrees to consent to a perpetual right-of-way to
21 NTUA to plan, design, construct, access, maintain, modify, and
22 replace a natural gas pipeline and any associated infrastructure,
23 without charge or other consideration from the Navajo Nation or the
24 United States, including waiver of any right to tax the right-of-way.

25 j. Each of the Tribes may determine to amend any of the projects
26 identified in this paragraph, except for the iiná bá – paa tuwaqat’si
27 pipeline.

28 13. Paragraph 13.0 – Waivers, Releases and Retention of Claims.

29 a. This paragraph sets forth the Navajo Nation’s waivers of claims
30 against the State of Arizona, the Hopi Tribe, the Hopi Allottees, the

1 San Juan Southern Paiute Tribe, and any other individual, entity,
2 corporation, or municipal corporation for all water rights settled
3 under the Settlement Agreement, including all past, present and
4 future claims for such water, and for claims of past or present injury
5 to such water rights.

6 b. This paragraph identifies the claims retained by the Navajo Nation,
7 which are for injury to and enforcement of the rights set forth in the
8 Settlement Agreement; for new water rights for land owned or
9 acquired in fee by the Navajo Nation or in trust by the United States
10 for the Navajo Nation's benefit; for injury to water rights by any
11 tribe other than the Hopi Tribe, the San Juan Southern Paiute Tribe
12 or the Zuni Tribe; and against water rights claims by or for any tribe
13 other than the Hopi Tribe, the San Juan Southern Paiute Tribe or the
14 Zuni Tribe.

15 c. This paragraph sets forth the United States' waiver of claims on
16 behalf of the Navajo Allottees against the State of Arizona, the
17 Navajo Nation, the Hopi Tribe, the Hopi Allottees, and the San Juan
18 Southern Paiute Tribe for all water rights settled under the
19 Settlement Agreement, including all past, present and future claims
20 for such water, and for claims of past, present, or future injury to
21 such water rights.

22 d. This paragraph identifies the claims retained by the United States on
23 behalf of the Navajo Allottees, which are for injury to and
24 enforcement of the rights set forth in the Settlement Agreement, and
25 against water rights claims for or injury resulting from the water
26 rights claims of any tribe other than the Navajo Nation, the Hopi
27 Tribe, the San Juan Southern Paiute Tribe or the Zuni Tribe.

28 e. This paragraph sets forth the Navajo Nation's waivers of claims
29 against the United States for all water rights settled under the
30 Settlement Agreement, including all past, present and future claims

1 for such water; claims of past or present injury to such water rights;
2 past, present, and future claims arising out of monitoring activities
3 by the United States; past and present claims related to foregone
4 benefits from non-Navajo use of water; past and present claims
5 based on damage, loss, or injury to land or natural resources due to
6 loss of water or water rights related to hunting, fishing, gathering, or
7 cultural rights; past and present claims related to failure to establish
8 or provide water delivery systems; past and present claims relating
9 to irrigation projects; and past and present claims based on failures
10 to provide dam safety improvements.

11 f. This paragraph identifies the claims retained by the Navajo Nation
12 against the United States, which are for injury to and enforcement
13 of the rights set forth in the Settlement Agreement; for new water
14 rights for land owned or acquired in fee by the Navajo Nation;
15 against water rights claims for or for injury resulting from the water
16 rights claims of any tribe other than the Hopi Tribe, the San Juan
17 Southern Paiute or the Zuni Tribe.

18 g. This paragraph identifies the United States' waivers of claims
19 against the Navajo Nation and members of the Navajo Nation for all
20 claims of past or present injury to water rights settled under the
21 Settlement Agreement.

22 h. This paragraph identifies the United States' retention of all claims
23 not expressly waived against the Navajo Nation and the members of
24 the Navajo Nation.

25 i. This paragraph identifies the non-tribal parties' waivers of claims
26 against the Navajo Nation and members of the Navajo Nation, and
27 the United States as trustee for the Navajo Nation and Navajo
28 Allotees for all past and present claims for injury to water rights
29 resulting from the diversion or use of water on Navajo land or
30 Navajo allotments.

- 1 j. This paragraph identifies the non-tribal parties' retention of claims
2 for injury to or enforcement of their rights under the Settlement
3 Agreement and for claims arising after the enforceability date.
- 4 k. In addition to the waivers that the Navajo Nation provides in the
5 Settlement Agreement, the Hopi Tribe and the San Juan Southern
6 Paiute Tribe, and the United States on their behalf, provide similar
7 waivers and affirm similar retentions.
- 8 l. For information on additional waivers and retentions, refer to
9 Paragraph 13.0 of the Settlement Agreement.
- 10 m. The Settlement Agreement represents full and complete satisfaction
11 of the water rights claims of the Navajo Nation and its members, the
12 Navajo Allottees, the United States as trustee for the Navajo
13 Allottees, the Hopi Tribe and its members, the Hopi Allottees, the
14 United States as trustee for the Hopi Allottees, and the San Juan
15 Southern Paiute Tribe and its members.
- 16 n. Nothing in the Settlement Agreement precludes the United States or
17 the applicable Tribe from enforcing federal and tribal environmental
18 laws and regulations on the Navajo Reservation, the Hopi
19 Reservation, the San Juan Southern Paiute Reservation, and all trust
20 lands held by the United States for the benefit of the Navajo Nation,
21 the Hopi Tribe and the San Juan Southern Paiute Tribe.

22 14. Paragraph 14.0 – Enforceability Date.

- 23 a. This paragraph identifies the conditions precedent that must be met
24 for the Settlement Agreement to become binding on the United
25 States, known as the Enforceability Date. Those conditions are:
26 Publication in the Federal Register a statement of findings that:
- 27 i. The Settlement Agreement has been amended to
28 conform to the settlement act, including all exhibits to
29 the Settlement Agreement.
- 30

- 1 ii. The amended Settlement Agreement has been signed by
- 2 all parties, and any exhibits requiring amendment have
- 3 been signed by the required parties.
- 4 iii. The waivers and releases have been executed.
- 5 iv. \$5 billion has been appropriated and deposited in the
- 6 appropriate accounts.
- 7 v. The LCR decree has been approved by the LCR
- 8 adjudication court.
- 9 vi. The Gila River decree has been approved by the Gila
- 10 River adjudication court.
- 11 vii. NTUA and the San Juan Southern Paiute Tribe have
- 12 executed a service agreement.
- 13 viii. The Navajo Nation, the Hopi Tribe and the San Juan
- 14 Southern Paiute Tribe have executed tribal resolutions
- 15 consenting to a limited waiver of sovereign immunity
- 16 from suit.

17 b. If the conditions precedent are not satisfied, the Settlement
18 Agreement will become void.

19 c. If the conditions precedent are not satisfied, the San Juan Southern
20 Paiute Reservation will continue to be in force and effect.

21 15. Paragraph 15.0 – Other Provisions.

22 a. No impairment of existing rights, including no impairment of the
23 right to the delivery or beneficial or consumptive use of Colorado
24 River Water under the 1944 Treaty with Mexico.

25 b. No quantification of public domain allottee water rights, or effect on
26 the ability of public domain allottees to make water rights claims.

27 c. Modification and amendment of the Settlement Agreement and
28 exhibits thereto may be made in writing upon agreement of all
29 parties, but modification or amendment of exhibits may not violate
30

1 the settlement act or the Settlement Agreement or adversely affect
2 the rights of any party not a signatory to such amendment.

3 d. The Governor may execute the Settlement Agreement on behalf of
4 the State of Arizona. The Arizona state agencies that are parties to
5 the Settlement Agreement may execute the Settlement Agreement
6 on their own behalf.

7 e. The parties to the Settlement Agreement become bound on the
8 effective date, except for the United States which becomes bound
9 on the Enforceability Date.

10 f. Within 30 days of the Effective Date, the parties shall seek to stay
11 all LCR litigation relating to the Navajo Nation, the Hopi Tribe, the
12 San Juan Southern Paiute Tribe, and the United States on their
13 behalf.

14 g. Any party may petition a court of competent jurisdiction to enforce
15 the terms of the Settlement Agreement.

16 h. The Settlement Agreement is construed in accordance with
17 applicable law.

18 i. All expenditure or advance of federal or state funds are contingent
19 upon the appropriation of such funds.

20 j. No member of Congress shall receive a personal benefit from the
21 settlement.

22 k. Only the claims of the Navajo Nation, the Hopi Tribe and the San
23 Juan Southern Paiute Tribe are settled by the settlement and no other
24 tribal claims are affected by the settlement.

25 l. Any person who is not a party to the Settlement Agreement but
26 whose water rights are protected by the Settlement Agreement is a
27 third-party beneficiary and is entitled to enforce the provisions of
28 the Settlement Agreement against the parties.

1 m. The parties other than the state parties and the United States agree
2 not to seek any legislation that would allow groundwater to be
3 transported away from the LCR basin.

4 n. Other than recognition of the right to withdraw or use underground
5 water from the two existing Atkinson Trading Company wells,
6 nothing in the Settlement Agreement addresses jurisdiction over
7 land that Atkinson owns or claims to own, and the United States and
8 the Navajo Nation retain all rights and claims concerning such land.

9 Y. Since January 29, 2024, the Navajo Nation Water Rights Commission, with legal and
10 technical assistance from the Navajo Nation Department of Justice and the Navajo
11 Nation Department of Water Resources, provided 31 public presentations on the
12 Navajo Nation's Arizona water rights claims and related litigation and settlement
13 efforts to over 733 individuals in 25 different chapter communities. Presentations
14 were also provided to the Diné Hataalii Association, the Navajo Nation Human
15 Rights Commission, Navajo Nation Enterprises, and Agency Councils. The Navajo
16 Nation Water Rights Commission also hosted 7 forums simultaneously on radio and
17 social media livestreams. The radio forums were rebroadcasted to ensure broad
18 listenership, and the livestreams were played on the President's Facebook and
19 YouTube accounts, the Navajo Nation Council's Facebook and YouTube accounts,
20 the Water Rights Commission's Facebook page, and the Attorney General's
21 Facebook page to maximize viewership. The Department of Justice also conducted
22 livestreams on the Attorney General's Facebook page and as part of the President's
23 Lunch & Learn series broadcast on Facebook and YouTube. The various social media
24 livestreams have received engagement from over 33,000 viewers.

25 Z. On May 8, 2024, the Navajo Nation Water Rights Commission, through NNWRC-
26 2024-012, passed a resolution expanding the Negotiation Team to include additional
27 Council Delegates from affected communities who have participated in settlement
28 negotiations. Navajo Nation Water Rights Commission Resolution NNWRC-2024-
29 012 is attached as **Exhibit N**.

1 AA. On May 9, 2024, the Navajo Nation Water Rights Commission, through NNWRC-
2 2024-014, passed a resolution endorsing and recommending to the Navajo Nation
3 Council to approve the Settlement Agreement. Navajo Nation Water Rights
4 Commission Resolution NNWRC-2024-014 is attached as **Exhibit O**.

5 BB. Consistent with the concept of *Tó'ée'iiná at'e*, the Navajo Nation Council has
6 determined that it is in the best interest of the Arizona Chapters of the Navajo Nation,
7 the members of the Navajo Nation residing therein, and the Navajo Nation as a whole,
8 to approve the Settlement Agreement.

9
10 **SECTION THREE. ASSOCIATED RIGHTS-OF-WAY**

11 A. Pursuant to Paragraph 12.5 of the Settlement Agreement, the Navajo Nation is
12 providing its consent for certain rights-of-way: (1) a right-of-way granted to the
13 United States for the *iiná bá – paa tuwaqat'si* pipeline and any infrastructure
14 reasonably necessary to operate said pipeline; (2) a right-of-way granted to the Hopi
15 Tribe for the Side Rock-Moenkopi Groundwater Project; and (3) such other rights of
16 way that are necessary to implement the terms of the settlement with respect to the
17 groundwater projects of the Hopi Tribe and the San Juan Southern Paiute Tribe.

18 B. In accordance with Paragraph 12.5 of the Settlement Agreement, the Navajo Nation
19 has agreed that the rights-of-way referenced in subsection A above will be perpetual
20 in duration and non-exclusive. The Navajo Nation deems the perpetual term of the
21 rights-of-way reasonable given the rights-of-way purposes and the overall terms of
22 the Settlement Agreement.

23 C. The Navajo Nation has agreed that no compensation will be due from the grantees to
24 the Navajo Nation for the rights-of-way described in Paragraph 12.5 of the Settlement
25 Agreement.

26 D. The Hopi Tribe and the San Juan Southern Paiute Tribe remain responsible for any
27 surface damage to Navajo lands and resources as provided in Paragraph 12.5.1.2 of
28 the Settlement Agreement.

29 E. The Navajo Nation has agreed not to tax or assess, in any manner whatsoever, directly
30 or indirectly, any rights, property, or activity associated with the rights-of-way or

1 other legal devices, infrastructure, and other activities described in Paragraph 12.5 of
2 the Settlement Agreement.

3 F. The Navajo Nation is providing its consent for the rights-of-way contained in
4 Paragraph 12.5 of the Settlement Agreement with the condition that the right-of-way
5 grantee at issue will comply with the Nation's right-of-way application process
6 developed by the Navajo Nation General Land Development Department, including
7 terms and conditions modified to reflect Paragraph 12.5 of the Settlement Agreement
8 and payment of associated administrative fees. The grantees shall submit all right-
9 of-way documentation to the Navajo Nation Department of Justice and the
10 Department of Justice shall coordinate with the Navajo General Land Development
11 Department in the grantees' submission of these specific applications for rights-of-
12 way.

13 G. In order to effectuate the Navajo Nation's consent for the rights-of-way in accordance
14 with the terms of Paragraph 12.5 of the Settlement Agreement, the Nation is
15 requesting waivers of several sections of the Bureau of Indian Affairs right-of-way
16 regulations found at 25 C.F.R. Part 169. Specifically, the Navajo Nation is requesting
17 a waiver of the following sections of 25 C.F.R. Part 169: 169.103(f)(2), 169.105(c),
18 169.110(a), 169.120(b), and 169.125(c)(5)(iii):

19 1. 169.103(f)(2): The Navajo Nation deems that, consistent with the terms set
20 forth in Paragraph 12.5 of the Settlement Agreement, a waiver of any bond,
21 insurance or alternative form of security is in the Navajo Nation's best
22 interest.

23 2. 169.105(c): The Navajo Nation believes waiving the due diligence
24 requirements in 169.105 is in the best interest of the Navajo Nation.

25 3. 169.110(a): The Navajo Nation has agreed to compensation in the Settlement
26 Agreement that is satisfactory to the Navajo Nation, the Navajo Nation hereby
27 waives valuation, and the Navajo Nation has determined that accepting such
28 agreed-upon compensation and waiving valuation is in its best interest.

29 4. 169.120(b): The Navajo Nation has determined that, consistent with the terms
30 set forth in Paragraph 12.5 of the Settlement Agreement, waiver of the

1 requirement that the right-of-way grantee be required to pay for all damages
2 to the land for which the right-of-way is granted is in the best interest of the
3 Navajo Nation.

- 4 5. 169.125(c)(5)(iii): The Navajo Nation has determined that, consistent with the
5 terms set forth in Paragraph 12.5 of the Settlement Agreement, waiver of the
6 requirement that the right-of-way grantee restore the land related to the right-
7 of-way as nearly as may be possible to its original condition, to the extent
8 compatible with the purpose for which the right-of-way was granted, or
9 reclaim the land if agreed to by the Navajo Nation is in its best interest.

10
11 **SECTION FOUR. SIDE AGREEMENT CONCERNING C-AQUIFER PUMPING**

- 12 A. The Settlement Agreement contains an ancillary agreement among the United States,
13 the Hopi Tribe, the Navajo Nation, Bar T Bar, and the Arizona State Land
14 Department concerning pumping from the Coconino Aquifer (“Side Agreement”).
15 The Side Agreement which is titled “Certain Agreements among the United States,
16 the Hopi Tribe, the Navajo Nation, Bar T Bar, and the Arizona State Land
17 Department concerning Underground Water and Related Rights and Obligations in
18 the Navajo Hopi C-Aquifer Pumping Restriction Area and Bar T Bar Ranch” is
19 attached as **Exhibit P** (Exhibit 9.10 to the Settlement Agreement).
- 20 B. In general, the Side Agreement limits the drilling of new non-exempt wells by various
21 parties in specific areas. The Side Agreement also details the maximum amounts of
22 groundwater that may be pumped by the various parties in specific areas.

23
24 **SECTION FIVE. APPROVALS**

- 25 A. The Navajo Nation Council hereby approves the Settlement Agreement in the form
26 of or substantially similar to the form of **Exhibit A** as attached.
- 27 B. The Navajo Nation Council hereby approves a limited waiver of sovereign immunity
28 on the terms set forth in **Exhibit Q** as attached for the limited and sole purpose of
29 allowing the Navajo Nation to be joined as a party in actions concerning the
30 interpretation or enforcement of (1) the Settlement Agreement; (2) the federal

1 legislation that authorizes, ratifies, and confirms the Settlement Agreement; and (3)
2 the LCR and Gila River Decrees.

3 C. The Navajo Nation Council hereby consents to and approves (1) a right-of-way or
4 other legal device granted to the United States for the iiná bá – paa tuwaqat’si pipeline
5 and any infrastructure reasonably necessary to operate, maintain, and replace said
6 pipeline; (2) a right-of-way granted to the Hopi Tribe for the Side Rock-Moenkopi
7 Groundwater Project, consistent with the terms as described in Section Three, and (3)
8 such other rights-of-way that are necessary to implement the terms of the Settlement
9 Agreement with respect to the groundwater projects of the Hopi Tribe and the San
10 Juan Southern Paiute Tribe.

11 D. The Navajo Nation Council hereby waives any consideration due from the grantees
12 to the Nation for the rights-of-way described in Paragraph 12.5 of the Settlement
13 Agreement.

14 E. The Navajo Nation hereby waives any tax or assessment, in any manner whatsoever,
15 directly or indirectly, any rights, property, or activity associated with the rights-of-
16 way or other legal devices, infrastructure, and activities as described in Paragraph
17 12.5 of the Settlement Agreement.

18 F. The Navajo Nation hereby requests a waiver of the following Bureau of Indian
19 Affairs right-of-way regulations contained in 25 C.F.R. Part 169: 169.103(f)(2),
20 169.105(c), 169.110(a), 169.120(b), and 169.125(c)(5)(iii).

21 G. If the Bureau of Indian Affairs requires the Navajo Nation to provide its consent for
22 additional waivers of the requirements of 25 C.F.R. Part 169 in order to issue the
23 rights-of-way agreed to by the Navajo Nation in Paragraph 12.5 of the Settlement
24 Agreement, the Navajo Nation Attorney General shall be authorized to provide such
25 written consent on behalf of the Navajo Nation.

26 H. The Navajo Nation Council hereby approves the Side Agreement titled “Certain
27 Agreements among the United States, the Hopi Tribe, the Navajo Nation, Bar T Bar,
28 and the Arizona State Land Department concerning Underground Water and Related
29 Rights and Obligations in the Navajo Hopi C-Aquifer Pumping Restriction Area and
30

1 Bar T Bar Ranch” in the form or substantially similar to the form attached as
2 **Exhibit P** (Exhibit 9.10 to the Settlement Agreement).

3 I. The Navajo Nation Council hereby authorizes the President of the Navajo Nation and
4 the Attorney General of the Navajo Nation to execute the Settlement Agreement in
5 the form of or substantially similar to the form of **Exhibit A** as attached and any and
6 all other documents necessary or appropriate to effectuate the intent and purpose of
7 this resolution.

8 J. With this approval, the Navajo Nation binds all bands of Navajo People and chapters
9 of the Navajo Nation, including all entities, agencies, divisions, departments, and
10 programs thereof, to the terms of the Settlement Agreement.
11

12 **SECTION SIX. PROCEDURES FOR APPROVING CHANGES IN THE** 13 **SETTLEMENT AGREEMENT**

14 In the event changes are made to the Settlement Agreement and/or associated exhibits
15 thereto during the congressional process such that the form of the Settlement
16 Agreement and/or associated exhibits are not substantially similar to **Exhibit A** as
17 attached, the Navajo Nation Council delegates to the Negotiation Team the authority
18 to make necessary technical and conforming changes to the Settlement Agreement, and
19 authorizes the President of the Navajo Nation and the Attorney General of the Navajo
20 Nation to execute the same.
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